U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 08 2007

EAC 06 043 50293

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an equity research analyst. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner asserts that the director failed to consider her accomplishments. For the reasons discussed below, we uphold the director's finding that the petitioner has not demonstrated that a waiver of the alien employment certification is warranted in the national interest. Specifically, the petitioner relies almost entirely on her own self-serving resume and copies of internal reports and presentations unsupported by more objective evidence of the petitioner's impact in her field, such as letters from independent members of the field who have been influenced by the petitioner explaining the significance of her work or media reports on the novelty and significance of projects on which the petitioner has worked.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Accounting and Finance from the London School of Economics and Political Science, University of London. The petitioner's occupation falls within the

pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director did not contest that the petitioner works in an area of intrinsic merit, equity research analysis, and we find that she does. Next, the petitioner must demonstrate that the proposed benefits of her work would be national in scope. Initially, the petitioner asserted:

> The prospective research reports which I will be writing will be covering themes from both the US and the UK and Europe asset management markets and will be distributed nationally throughout the US, therefore assisting both US investors who are interested in gaining exposure to the domestic asset management market as well as US investors aiming to achieve international diversification through investing in the UK and European asset management stocks – at present, such cross-continental research product offering is lacking from the US market, yet, demand for such is strong, as indicated by many of my current clients.

The only information in the record regarding the petitioner's future employment in the United States is various electronic correspondence with individuals at [redacted] concerning what appears to be a temporary position.[1] The correspondence does not specifically discuss what the petitioner's job duties would be. In response to the director's request for additional evidence, the petitioner notes that [redacted]s a large company with 15,160 financial advisors in 700 offices in 36 countries and that any client "interested in investing in asset management sector stocks will benefit from the investment ideas presented in the reports that I will be writing." While [redacted] may be a large company with clients nationwide and even worldwide seeking to invest nationally and internationally, the petitioner has not sufficiently explained how her internal reports will benefit the *field* of equity research analysis at the national level.

Even if we concluded that the petitioner's *potential* employment at a company with a large client base is sufficient to conclude that the benefits of her work would be national in scope, it remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

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[1] The position appears to be temporary because the representatives at [redacted] dismiss the possibility of seeking an immigrant visa and note the difficulties in securing a nonimmigrant visa for the petitioner.

Initially, the petitioner asserted:

> Due to the vast size and dominance of the US equity market, US research analysts have traditionally been, and remain so, focused exclusively on the domestic market. The asset management industry, however, has rapidly evolved over the past years, and while geographic borders have become somewhat blurred, different themes prevail at the different sides of the Atlantic – clients increasingly demand comprehensive global research products and it is no longer satisfactory to be knowledgeable in just one geography. In this respect, I have the unique advantage over my US colleagues to have acquired experience in the UK and the European markets while at the same time have gained exposure to the US players through their presence in the UK. Therefore, what sets me apart from my US peers and what no other research professional at my level is able to offer to clients, and which I can, is a 'one-stop' integrated global coverage of the sector and thorough knowledge of the local specifics of the asset management industry across its key markets.

The petitioner submitted her self-serving resume, her degrees and certifications, the above-mentioned electronic correspondence and copies of presentations she has given. On August 3, 2006, the director requested evidence of "specific prior achievements in the field which would justify the projected future benefit of the alien to the national interest." The director inquired as to how the petitioner had influenced the financial field as a whole, whether her work has been recognized by experts in the field, whether she had published any work and how her work compares with the work of others in the field.

In response, the petitioner references a U.S. equity research scandal arising from the recommendation of bad stocks in 1999 and 2000, which resulted in an investigation that ended in 2004 and new procedures that have "gradually" restored "fairness, and even integrity, to financial markets." She asserts that this history demonstrates the importance of independent research analysts with no "conflict of interest." She then asserts that she fulfills the "new generation" of equity research criteria due to her independence (through her work at a company that exclusively provides independent mergers and acquisitions advice) and her in-depth knowledge of the asset management sector (through practical experience and education). She further notes that her employer in the UK, [redacted] employed less than 50 individuals and was ranked number one and number three in 2004 and 2005, a reflection on all of its employees. The petitioner submits the ranking compiled by SNL Financial. She also submits deal memoranda listing her as a team member and her unpublished dissertation. Finally, the petitioner notes that she was included in the 36 percent of those taking the Chartered Financial Analysts (CFA) Level 1 exam who passed it.

The director concluded that while the petitioner had drafted financial analyses, she had not established her past contributions or that she is "widely recognized by others in the field or that she has made a significant impact on the field of financial analysis."

On appeal, the petitioner asserts that in her field, "'specific contribution' is measured either in terms of revenue generation which is directly linked to the value created for the clients and their shareholders or in terms of break-through financial innovation." She asserts that the three deal memoranda submitted represent $10 million in revenues and that the Rensburg-Carr Sheppards Crosthwaite transaction "was the first ever reverse merger in the private client asset management sector, and consequently became a precedent transaction in the sector and a model of how to structure other similar transactions in the sector." The petitioner further asserts that there are four "existing" methodologies of valuing companies but that she developed a fifth methodology combining elements from absolute and relative valuation based on statistical regression of the public asset management universe, which she successfully applied in practice when valuing the then-private New Star Asset Management Ltd. (NSAM) and, through a three-person team at Putnam Lovell, when subsequently advising NSAM for its initial public offering (IPO) in November 2005. The petitioner submits at article on the NSAM IPO. Finally, the petitioner asserts that her employment at a distinguished company in such a competitive field and her successful results on the CFA Level 1 exam set her apart from others in the field.

We will not presume the petitioner's impact in the field from the reputation of her employer. It is the petitioner's burden to demonstrate her own individual impact. Further, the petitioner's experience with the UK and U.S. markets could be articulated on an application for alien employment certification. As stated above, special or unusual knowledge or training does not inherently meet the national interest threshold as the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of DOL. *NYSDOT*, 22 I&N Dec. at 221. Moreover, while the fact that the petitioner successfully completed her CFA Level 1 exam might relate to one of the regulatory criteria for aliens of exceptional ability, set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C), that classification normally requires an alien employment certification approved by DOL. We cannot conclude that meeting one criterion, or even the requisite three criteria warrants a waiver of that requirement in the national interest. *Id.* at 222.

The petitioner relies primarily on her own statements, her self-serving resume and unpublished internal memoranda and Master's dissertation. The record contains no letters from independent members of the field, or even the petitioner's own colleagues, confirming her role on various projects and the significance of those projects. While the petitioner has submitted the deal memoranda reflecting her role as a team member, these memoranda do not establish the significance of the projects. The record also lacks evidence of articles in the general or trade media commenting on the significance of the beneficiary's analyses. For example, the record contains no evidence beyond the petitioner's own assertion that reverse mergers in the private client asset management sector are now conducted based on her own novel success with the Rensburg-Carr Sheppards Crosthwaite transaction. While the petitioner submitted an article on NSAM's IPO, the article does not suggest that the IPO was successful due to a novel valuation methodology. The record lacks evidence that this new valuation methodology is gaining acceptance as a fifth methodology for evaluating the value of companies.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.